apprehension of the evidence or of the law. The rest of the submissions urged on behalf of the second appellant relate to his defence that the firing of the gun was accidental and occurred when the deceased was holding his hand during a struggle. There was overwhelming evidence to support the trial judges' finding that it was a deliberate act on his part and in our opinion, once the trial judges rejected his defence, there was on all the evidence before them, no other possible verdict against him except that of guilty of the offence of murder.

With regard to the first appellant many grounds of appeal were raised but during the hearing of the appeal all except the question of common intention were either abandoned or were plainly admitted to be without any substance. On the question of common intention, it is submitted that as there was no "tangible proof" to establish a common intention shared by the appellants to use the gun if necessary to overcome any resistance by the proprietor, the trial judges were wrong in inferring a common intention to use the gun if any resistance was put up by the proprietor during the course of the robbery. We reject this submission. The facts speak plainly for themselves. The gun belonged to the first appellant. He brought it with him to Singapore for the purpose of committing robbery. He loaded it and handed it to the second appellant before they entered the "wine shop" which they had planned to rob on the night in question. It was planned that the proprietor would be held up at gun point by the second appellant in order to carry out the robbery. They waited until the coast was clear and in his presence the second appellant pointed the gun at the proprietor. The proprietor was deliberately shot when he offered resistance during the robbery.

In our judgment, on all these facts, the trial judges were plainly justified in finding the first appellant guilty of the offence of murder under section 302 read with section 34 of the Penal Code which provides that "when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone".

The appeals are accordingly dismissed.

Appeals dismissed.

Solicitors: *David Marshall; Allen & Gledhill.*

TAN KOK TECK v. LIM SIAN NGO

[C.A. (Wee Chong Jin C.J., Winslow and Kulasekaram JJ.) October 31, 1974]

[Singapore — Civil Appeal No. 14 of 1974]

Family Law — Nullity of marriage — Petition for — Respondent aged 15 years 5 months at time of marriage — Marriage according to Chinese customary rights — Whether void under Women's Charter (Cap. 47), ss. 9 and 20.

This was an appeal from the decision of the High Court ([1974] 2 M.L.J. 9). The parties were married according to Chinese customary rites on 13th December 1966, when the respondent was aged 15 years 5 months.

The petitioner sought to have the marriage declared null and void under section 9 of the Women's Charter on the ground that at the date of marriage the respondent was under the age of 18 years and the marriage was not authorised by licence of the Minister as provided under section 20 of the Women's Charter. Choor Singh J. held that section 9 of the Women's Charter (in its unamended form) did not apply to Chinese marriages and therefore the marriage was valid. On appeal to the Court of Appeal,

Held: Chinese customary marriages belonged to a special class of marriages which were not within the contemplation of the Women's Charter as marriages which had to be solemnized under Part III thereof before its amendment in 1967 and therefore the learned trial judge was correct in holding that section 9 of the Women's Charter did not apply to Chinese customary marriages and that the marriage in this case was valid.

Case referred to:-

(1) *Re Loh Toh Met decd.* [1961] M.L.J. 234 @ 248.

COURT OF APPEAL.

N. C. Goho for the appellant.

K. S. Rajah (Director of Legal Aid) for the respondent.

Winslow J. (delivering the judgment of the Court): At the conclusion of the hearing of this appeal on 5th August, 1974 which we then dismissed we stated that we would give our reasons in writing at a later date.

This appeal was against the dismissal by the High Court of a petition for nullity of marriage by the appellant on the ground that his marriage to the respondent in Singapore, according to Chinese customary rites, on 13th December 1966 was invalid under section 9 of the Women's Charter (Cap. 47) because she was, at that date, under the age of 18 years of age, such marriage not having been authorised by licence granted by the Minister under section 20 thereof.

Section 9 of the Women's Charter, before its amendment by Act No. 9 of 1967 which became effective on 3rd June 1967 was as follows: —

"9. Any marriage purported to be solemnized under this Part of the Ordinance shall be invalid if at the date of the marriage either party is under the age of eighteen years unless the solemnization of such marriage was authorized by a licence granted by the Minister under the provisions of section 20 of this Ordinance."

It is pertinent to observe that this section, as it then was, refers to invalidity of a marriage solemnized under Part III in cases where *either* party was under the age of eighteen years. At the date of the marriage in 1966 the respondent, as stated in the petition, was 15 years and 5 months of age and it was not in issue that she was the only party to the alleged marriage who was under the age of 18 years. We were accordingly not concerned with any complaint about the petitioner's

age in this appeal. They lived and cohabited in Singapore till February, 1973 and have two children. They are domiciled in Singapore and are Singapore citizens.

Section 20 empowers the Minister to grant a licence, in his discretion, authorising the solemnization of a marriage although the female party is under that age.

Counsel for the appellant contended that the marriage was invalid in the absence of such a licence.

The trial judge held that as the marriage in question was a Chinese customary marriage which was not solemnized under Part III of the Charter as it stood before the amendments made to it by Act No. 9 of 1967, section 9, as it was prior to its amendment by Act No. 9 of 1967, had no application to the marriage and, as there was no other ground for holding otherwise, dismissed the petition.

Although the importance of this appeal lies in the question it raises *i.e.* whether, between the coming into operation of the Women's Charter on 15th September, 1961 and 3rd June, 1967, when it was amended as aforesaid, marriages contracted or effected in accordance with Chinese customary rites where either party was under the age of eighteen should be held to be invalid because of the provisions of section 9 as it then stood, the question can no longer arise after the amendment of this Charter by Act No. 9 of 1967 as it now includes in the definition section, the definition of the word "solemnization" to include the contracting of a marriage or effecting a marriage in accordance with the law, religion, custom or usage of the parties or any of the parties thereto. The effect of this definition is to bring all marriages howsoever contracted or effected within the scope of Part III of the Charter.

We use the expression "contracted or effected" instead of "solemnized" advisedly because at the date of the marriage in question, *i.e.* in 1966, no definition of the expression "solemnization" existed in the Charter as it did after the amendments introduced by Act No. 9 of 1967 which defined "solemnization" as including the "contracting of a marriage or effecting a marriage in accordance with the law, religion, custom or usage of the parties or any of the parties thereto".

Before the coming into force of the Women's Charter in 1961 expressions such as "solemnize" and "solemnization" were employed in legislation such as the Christian Marriage Ordinance and the Civil Marriage Ordinance (being Chapters 37 and 38 respectively of the Revised Edition of 1955) where they acquired restricted meanings consistent with the purposes of these Ordinance which were to provide *inter alia* for the solemnization of Christian marriages by ministers of religion and the solemnization of monogamous marriages by Registrars, respectively, in strict compliance with the provisions thereof.

Section 3 of the Christian Marriage Ordinance required every marriage between Christians and between persons one of whom was a Christian to be solemnized in accordance with the provisions of that Ordinance or of the Civil Marriage Ordinance and provided that every such marriage solemnized otherwise than so provided should be invalid. Only certain ministers of religion were permitted to solemnize such marriages under the Christian Marriage Ordinance in prescribed places at prescribed times. In the case of the Civil Marriage Ordinance, only a Registrar of Marriages was empowered to solemnize marriages thereunder. All marriages when solemnized in accordance with the provisions of these Ordinances became monogamous.

Where both parties to a marriage were Muslims, however, no marriage between them could be solemnized under the Civil Marriage Ordinance but others could elect to have their marriages solemnized thereunder.

Any person married in accordance with the provisions of either of these Ordinances, was, during the continuance of such marriage deemed to commit the offence of bigamy within the meaning of section 494 of the Penal Code if such person purported to contract a valid marriage with a third person under any law, custom, religion or usage.

Before the coming into force of the Women's Charter therefore, only a person who contracted a monogamous marriage which was solemnized as aforesaid was prevented from marrying anyone else during the continuance of that monogamous marriage. It is noteworthy that these two Ordinances expressly prohibited the contracting of bigamous marriages whilst a person remained married thereunder. Before these two Ordinances became law in 1940 the previous Christian Marriage Ordinance which became law in 1899 (See Cap. 82 of the Revied Edition of 1936) contained no such prohibition and that Ordinance as it stood before 1940 led to conclusions such as the one reached by Thomson C.J. (as he then was) in *Re Loh Toh Met Decd.*[1] to the effect that that Ordinance dealt with the forms of solemnization of such marriages and not the capacity to marry under their personal law of persons marrying thereunder.

In the present appeal, we were not faced with this problem. It was quite clear that the Women's Charter, like its predecessors relating to monogamous marriages, *i.e.* the two Ordinances aforesaid, deals not only with forms of solemnization of marriages thereunder but also with the capacity or incapacity of parties thereto to marry again during the continuance of such marriages. Provision is clearly made in this respect by section 4 thereof.

Part III thereof under the heading "Solemnization of marriages" imposes further restrictions as to capacity *e.g.* age, consents, affinity etc. on persons desiring to marry thereunder.

There was, however, no express prohibition by the Charter, before its amendment in 1967, of the contracting or effecting of Chinese customary marriages such as the one before us and it was not in issue that it was contracted or effected in a manner approved by Chinese custom in 1966 at a time when the respondent was under 18 years of age. It was not contended that Chinese custom prohibits such a marriage and it was accordingly a valid Chinese customary marriage.

The Charter did not, in our judgment, then impose an obligation on all parties who desired to marry

according to Chinese custom to have their marriages solemnized under Part III although it did not prevent them from having their marriages so solemnized if they desired to do so. The couple in question did not marry under Part III of the Charter as no notice was given in the prescribed form as required by section 13 in the case of persons desiring to marry under the provisions of Part III.

Chinese customary marriages have long been recognised as valid despite their polygamous character. The Women's Charter by section 4 thereof, however, imposed restraints on further marriages during the continuance of such marriages until all such existing marriages ceased to exist. Any person who found himself in that situation could no longer, if he married again, contract a valid marriage with any other person during the continuance of that marriage, under any law, custom, religion or usage. The position of Chinese bachelors after 2nd March 1961 was placed on a similar footing.

The appellant/petitioner herein was a bachelor in 1966 when he contracted or effected his marriage with the respondent according to Chinese custom.

The question before us was whether he was required to have this marriage solemnized under Part III of the Charter as it then stood in 1966.

No difficulty would have arisen had he chosen to have his marriage solemnized by the Registrar under section 22 in which case a licence under section 20 authorizing the marriage would have been a prerequisite to the solemnization of his marriage. He would have had to deliver such a licence to the Registrar.

Having chosen to marry according to Chinese custom the question arose whether he was in a position to deliver such a licence to a person who could be said to be the person solemnizing the marriage having regard to the language of sub-section (1) of section 21 which was as follows before amendment of Act No. 9 of 1967:

"No marriage shall be solemnized unless a certificate for marriage or a licence authorizing the marriage has been delivered to the person solemnizing the marriage."

It seemed to us that in the special circumstances of a Chinese customary marriage such as this one there was no person who could in fact be said to be a person solemnizing the marriage between the parties.

In the circumstances such a marriage could not be said to have been solemnized under Part III of the Charter as it then stood because subsection (1) of section 21 prohibited the solemnization of such a marriage unless a licence authorizing it had been delivered to the person solemnizing it.

We arrived at the conclusion that Chinese customary marriages belong to a special class of marriages which were not within the contemplation of the Charter as marriages which had to be solemnized under Part III thereof before its amendment in 1967.

We accordingly dismissed the appeal but made no order as to costs.

Appeal dismissed.

Solicitors: *S. C. Goho & Co.; Director of Legal Aid.*

MALAYSIAN REPORTS

T.W. WU & COMPANY (M) SENDIRIAN BHD. v. SANKO ASIA LINE LTD. AND THE PORT SWETTENHAM AUTHORITY

[O.C.J. (Abdul Hamid J.) June 27, 1974]
[Kuala Lumpur — Civil Suit No. 5 of 1971]

Contracts — Bailments — Duties and responsibilities of bailee — Bailee for reward — Loss of goods after they were loaded to wharf — Whether port authority liable — Burden of proof — Contracts (Malay States) Ordinance, 1950, ss. 104 & 105.

Port Authority — Bailees — Care and diligence — Duty — Kelang Port Authority By-Laws, 1965, by-law 91(1).

In this case the facts adduced showed that 93 cases of pharmaceutical goods had been unloaded at Port Klang and kept in the custody of the Port Swettenham Authority. Subsequently only 29 cases were collected by the plaintiffs. The plaintiffs brought an action for breach of contract and/or conversion of the remaining 64 cases.

Held: (1) the Port Swettenham Authority in this case were bailees for reward;

(2) a bailee for reward is under a liability, in the performance of his duties and responsibilities. to exercise due care and diligence of the goods entrusted into his custody as a prudent man would of his own goods according to all the circumstances of the case;

(3) where a claim is made for the return of goods in his possession and on proof of failure to deliver on demand the burden lies on the bailee to establish that the loss or disappearance was not due to his fault or misconduct or lack of care or the fault, or misconduct or lack of care of his officers or servants;

(4) in this case the Port Authorities had failed to show that they had exercised due care and diligence and therefore they were liable for breach of their duty as bailees for reward.

Cases referred to:-

(1) *Lee Heng Sendirian Bhd.* v. *Port Swettenham Authority* [1971] 2 M.L.J. 27.

(2) *B.R.S. Ltd.* v. *Arthur Crutchely* [1968] 1 Lloyds Rep. 271.

(3) *Spurling* v. *Bradshaw* [1956] 2 All E.R. 121 at p. 125.

(4) *Hunt & Winterbothan Ltd.* v. *B.R.S. (Parcels) Ltd.* [1962] 1 Q.B. 617, 634.

(5) *Brooke Wharf and Bull Wharf Ltd.* v. *Goodman Brothers* [1937] 1 K.B. 534.

(6) *Dwarka Nath* v. *R.S.N. Co. Ltd.* A.I.R. 1917 P.C. 173.

(7) *Trustees of Harbour Madons* v. *Best & Co.* (1899) I.L.R. 22 Mad. 524.

(8) *Mansfield Importers & Distributors Ltd.* v. *Casco Terminals Ltd.* [1971] 2 Lloyds Rep. 72.

(9) *Malayan Thread Co. Sdn. Bhd.* v. *Oyama Shipping Line Ltd. & Anor.* [1973] 1 M.L.J. 121.

(10) *William* v. *Curson Syndicate Ltd.* (1919) 35 T.L.R. 478.

(11) *Cheshire* v. *Bailey* [1905] 1 K.B. 237.

(12) *Morris* v. *Martin* [1966] 1 Q.B. 716.

CIVIL SUIT.

C. W. M. Abraham for the plaintiffs.

N. A. Marjoribanks (*Lall Singh Mukher* with him) for the first defendant.

J. Puthucheary (*Wong Chong Wah* with him) for the second defendant.

Abdul Hamid J.: The plaintiff T.W. Wu & Company (M) Sendirian Berhad brought an action against the carriers Sanko Asia Line Limited and the Port